IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

WP(C).No. 20677 of 2006(J)

OS.98/1999 of SUB COURT, PAYYANNUR

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PETITIONER:

MATHIRE KALLIANI, AGED 74 YEARS,
D/O.CHITTAI, CHERATHAZHAM AMSOM DESOM,
CANNANORE TALUK, CANNANORE DISTRICT.

BY ADV. SRI.GEORGE THOMAS (MEVADA)

RESPONDENTS:

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1. MATHIRE NARAYANAI, AGED 65 YEARS,
D/O.CHITTAI, CHERATHAZHAM AMSOM DESOM,
CANNANORE TALUK, CANNANORE DISTRICT.

2. SMT.MATHIRE KALLIANI, AGED 63 YEARS,
D/O.CHITTAI,
DO. DO.

3. SMT.MATHIRE PARVATHI,
AGED 59 YEARS, D/O.CHITTAI,
DO. DO.

4. SMT.MATHIRE KUNHATHAI,
D/O.CHITTAI,
DO. DO.

5. SMT.ALIKKEEL CHEEYAYI,
DO. DO.

6. SRI.KOOTACHITTA RAGHAVAN,
S/O.MALIYOTTAN KANNAN,
DO. DO.

7. SRI.MULLANTAKATH MULLAVI,
S/O.ABDULKHADER,
DO. DO.

8. SRI.THAYAMBATH KUNHAMBU,
S/O.KUNNARUKKARAN KANNAN,
DO. DO.

9. SRI.PAYYAPUNNAN ABDULRAHIMAN,
TALIPARAMBA AMSOM DESOM,
CANNANORE TALUK, CANNANORE DISTRICT.

10. SRI.KALASAKARAN CHEMMARAN,
S/O.LATE KUNHATHAI, S/O.CHEMMARAN,
CHERUTHAZHAM AMSOM DESOM,
P.O.PILATHARA, CANNANORE TALUK.

11. SRI.ALINKEEL MATHIRE GOVINDAN,
S/O.LATE KUNHATHAI,
DO. DO.

12. SMT.ALINKEEL MATHIRE GOVINDAN,
S/O.LATE KUNHATHAI,
DO. DO.

13. SRI.ALINKEEL MATHIRE BHASKARAN,
S/O.LATE KUNHATHAI,
DO. DO.

14. SRI.ALINKEEL MATHIRE GOPALAN,
S/O.LATE KUNHATHAI,
DO. DO.

15. SRI.ALINKEEL MATHIRE KRISHNAN,
S/O.LATE KUNHATHAI,
DO. DO.

16. SRI.ALINKEEL MATHIRE RAMANI,
D/O. LATE KUNHATHAI,
DO. DO.

17. SMT.PALAKEEL NARAYANI,
W/O.LATE DAMODARAN,
PAREEKKAM THADAM, PILLATHARA.P.O,
PIN-670 501,
(CHERUTHAZHAM AMSOM, CANNANORE DISTRICT).

18. SMT.PALAKEEL BINDU,
D/O.LATE DAMODARAN,
DO. DO.

19. SMT.PALAKEEL BEENA,
D/O.LATE DAMODARAN,
DO. DO.

20. SRI.PALAKEEL BIJU,
S/O.LATE DAMODARAN,
REP. BY HIS MOTHER SMT.PALAKEEL NARAYANI,
DO. DO.

21. SMT.MATHIRE KARTHIYANI,
D/O.LATE MATHIRE NARAYANI,
PAREKKAM THADAM, PILATHARA.P.O.

R10 BY ADV. SRI.RAYNOLD FERNANDEZ
R6 & 8 BY ADV SRI.M.SASINDRAN
R12 TO 15 BY ADV SRI.NINU M.DAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE PHOTOCOPY OF THE PLAINT IN O.S.98/89

EXT.P2: -DO- OF I.A. 617/2006 DT.5.7.06

EXT.P3: -DO- OF THE OBJECTION FILED BY THE 8TH RESPONDENT DT. 11.7.06

EXT.P4: -DO- OF THE ORDER PASSED IN I.A. 617/2006 DT.18.7.2006

jj /TRUE COPY/

P.A. TO JUDGE

M.N.KRISHNAN, J.

WP(C)No. 20677 OF 2006 J

Dated this the 20th July, 2007.

JUDGMENT

This writ petition is filed seeking to set aside the order passed by the learned Subordinate Judge, Payyannur in amendment application 617/06 in O.S.98/99. The plaintiff has filed an amendment application with a prayer to amend the plaint by holding that document No: 11 of 1950 executed by the father of the palintiff and defendant is only a sham and nominal document and even prior to the said document the property jointly belonged to the parties and, therefore, the proposed amendment is requested to be incorporated in the plaint. I may straightaway refer to para 3 of the plaint in order to appreciate the contention of the plaintiff. The plaintiff, after tracing out the title with respect to various portion of the properties submits that the father of the plaintiff and defendant viz., Chandan by virtue of a document 11 of 1950 had assigned the properties in favour of the plaintiff and defendant and thereby the property described in that document bas come into possession of the parties. Now what the plaintiff wants is that to give a go by to the document and wanted to contest that the said document is sham and recital document. Now, I may refer to Order VI

Rule 17 of the Civil Procedure Code, certainly amendment has to be allowed in order to resolve the controversy between the parties. But the proviso mandates that the said application shall be filed before the trial has commenced unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. In this case after the original disposal of the matter, the matter was taken up before the appellate court, the appellate court has remanded and thereafter an application for amendment of this nature has come into play. The very document which is now sought to be declared as sham and nominal is produced before the court by the plaintiff in support of the contention raised by him. Now it is sought to be withdrawn. Therefore the mandate of the proviso to Order VI Rule 17 CPC would reveal that this application cannot be entertained by any stretch of imagination. Even on merits a party cannot be allowed after litigating for seventeen years to totally give a go by to the originally pleaded case and to substitute a new case. If it is done certainly it will affect the very valid right that has accrued to the defendant and it will cause embarassment to him. So, none of the ingredients necessary to allow an application for amendment is satisfied. Further it only

points out that the plaintiff has no consistent case at all and whenever he or she finds it inconvenient they want to change the pleadings so as to suit the case at a later stage. Therefore, though the order written by the learned Subordinate Judge is not after discussion of the matter, the conclusion appears to be correct and, therefore, the order does not call for any interference and the writ petition is dismissed.

M.N.KRISHNAN
Judge

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